IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL WRIT PETITION NO.3331/01
Narain vs. Board of Revenue & Ors.

Date of order : 15/4/2008.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Pawan Pareek for the petitioner.
Shri Harshvardhan Nandwana, Govt. Counsel for the State.

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This writ petition is directed against the judgment of the Bord of Revenue dated 3.4.2000 whereby the Board while accepting the reference made to it by Director, Land Records under section 82 of the Rajasthan Land Revenue Act, 1956 set aside the mutation attested in favour of the petitioner on 5.12.1963. The Director, Land Records by his order dated 18.6.1998 made reference to the Board of Revenue on the premise that aforesaid mutation with regard to khasra no.363/514 aforesaid was wrongly attested in favour of the petitioner as the land in dispute was originally owned by one Kanhaiya who is member of Scheduled Caste.

Shri Pawan Pareek, learned counsel for the petitioner has argued that the Board of Revenue has erred in setting aside the

mutation attested in favour of the petitioner on the ground that the same was entered in violation of Section 42 of the Rajasthan Tenancy Act and therefore was void ab initio. Learned counsel argued that the Board in spite of having noted that the land in dispute was sold to the petitioner by Narayan on 6.7.1961 and the mutation was attested in his favour on 5.12.1963 could not have applied the bar contain in Section 42, supra, which was for the first time endrafted into the Rajasthan Tenancy Act w.e.f. 1.5.1964. It was argued that no such law can be applied retrospectively so as to deprive a citizen of his proprietary rights which already stood vested in him prior to the enforcement thereof. Learned counsel in support of his contention relied on the division bench judgment of this Court in Pt. Triveni Shyam Sharma vs. Board of Revenue, Raj.-1964 RLW 512 and judgment of the coordinate bench of this Court in Suwa Lal vs. State of Raj.-1985 RRD 98.

Shri Harshvardhan Nandwana, learned Govt. Counsel opposed the writ petition and submitted that the Board of Revenue has

rightly set aside the mutation because the land was earlier in the khatedari of a person belonging to Scheduled Caste. In view of the provisions of Section 42, supra, such land could not be transferred in favour of a person belonging to general category and such a transaction was therefore void ab initio. Neither could the learned Govt. Counsel dispute nor is it borne out from the reply to the writ petition filed by the State that the amendment aforesaid was made in section 42 of the Act after the transaction of sale was affected in this case.

The division bench of this Court in Pt. Triveni Shyam Sharma, supra had the occasion to deal with a similar controversy wherein it found that in spite of insertion of words “deemed always to have been added” by Section 4 of Tenancy (Second Amendment) Act, 1956 in Section 42 of the Rajasthan Tenancy Act, 1955, amendment cannot be applied retrospectively in respect of transactions which have become final prior to that date. The division bench found that sale transactions in that case had already taken

place prior to addition of proviso to Section 42 by Second Amendment Act and such a restriction brought about to the said decision would be applied only from 1.5.1964. In those facts, the division bench held that the amendment would be only prospective and would not apply to the transactions completed before the said amendment came to force. This view was reiterated by a co-ordinate bench of this Court in Suwa Lal, supra.

In view of what has been discussed above, this writ petition deserves to be allowed and is accordingly allowed. The judgment of the Board of Revenue is set aside.

The writ petition is accordingly allowed.

(MOHAMMAD RAFIQ), J.

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